IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1514 OF 2005

Goldie P.Sud. ... Petitioner
Versus.
The State of Maharashtra & anr. ... Respondents.

Shri Niranjan Mundargi for the Petitioner.
Ms.M.H.Mhatre, A.P.P. for the Respondent-State.

CORAM : ABHAY S. OKA, J.

DATED : 22nd July, 2005.

P.C.:

1. Rule. The learned A.P.P. waives service. Considering the facts and circumstances, the case is taken up for hearing forthwith.

2. The challenge in this petition under Article 227 of the Constitution is to the notice under section 110 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code of 1973) issued to the Petitioner by the Respondent No.2. The challenge is also to the summons issued under section 113 of the said Code of 1973 by the Respondent No.2.

3. The learned Counsel for the Petitioner submitted that the assertions made in the notice under section 110 of the Code of 1973 show that the notice has been issued only due to property dispute between the Complainant R.I.Memon and the Petitioner. He submitted that considering the assertions made in the notice, the act of issuing the notice is an abuse of process of law.

4. The learned A.P.P. submitted that this petition cannot be entertained. She submitted that the Petitioner has not even filed reply to the notice and the summons.

5. In a Writ Petition under article 227 of the Constitution normally this Court does not interfere with of a show cause notice as opportunity is available to the Petitioner to file a reply and contest the matter. Prima-facie there is some substance in the submission made by the learned Counsel for the Petitioner. However, it is for the Petitioner to file a reply and contest the notice. This petition can be disposed of by extending time for filing reply to the show cause notice. Considering the peculiar facts and circumstances of the case, it will have to be directed that if any adverse order is passed against the Petitioner, the same shall not be implemented for a period of two weeks.

6. Hence the following order is passed:

(i) It will be open for the Petitioner to file a reply to the notice within a period of two weeks from today. It is made clear that no further time will be granted to the Petitioner.

(ii) If reply is filed, the Respondent No.2 will be free to pass appropriate order in accordance with the law after complying with the principles of natural justice.

(iii) If the order passed by the Respondent NO.2 is adverse to the Petitioner, the same shall not be given effect to for a period of two weeks from the date of communication of the said order to the Petitioner.

(iv) Rule is partly made absolute in the above terms with no order as to costs.

Judge.